



PATENT
Customer No. 22,852
Attorney Docket No. 05725.1008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
)
Jerome PEYRELEVADE et al.) Group Art Unit: 3625
)
Application No. 10/024,355) Examiner: James H. Zurita
)
Filed: December 21, 2001)
)
For: METHODS AND SYSTEMS) Confirmation No. 4653
INVOLVING SIMULATED)
APPLICATION OF BEAUTY)
PRODUCTS)

Attention: Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

APPEAL BRIEF UNDER BOARD RULE § 41.37

In support of the Notice of Appeal filed July 10, 2009, the period for filing an appeal brief extending through October 10, 2009, by a request for extension of one month and fee payment filed concurrently herewith, and further to Board Rule 41.37, Appellants present this brief and enclose herewith payment of the fee of \$540.00 required under 37 C.F.R. § 1.17(c). An extension of time fee of \$130.00 is also included.

This Appeal responds to the April 16, 2009, final rejection of claims 1-72.

If any additional fees are required or if the enclosed payment is insufficient, Appellant requests that the required fees be charged to Deposit Account 06-0916.

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01 FC:1402
02 FC:1251

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I. Real Party In Interest

L'OREAL S.A. is the real party in interest.

II. Related Appeals and Interferences

There are currently no other appeals, interferences, or judicial proceedings of which Appellants, Appellants' legal representative, or Assignee are aware that would directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. Status Of Claims

Claims 1-72 are currently pending.

Claims 1-72 were finally rejected. The final rejections of claims 1-72 are at issue in this appeal.

IV. Status Of Amendments

The claims have not been amended subsequent to the final Office Action mailed on April 16, 2009 ("Office Action").

V. Summary Of Claimed Subject Matter

Independent claim 1 recites a method for beauty product selection.¹ The method includes accessing a facial image (page 28, paragraph [097]; FIG. 18, “1810”; FIG. 19, “1730”). The method also includes receiving a selection from a user of at least one beauty product for simulated application to the facial image (page 29, paragraph [099]; FIG. 18, “1820”). The method also includes simulating the at least one selected beauty product on the facial image (page 30, paragraph [0100]; FIG. 18, “1830”; FIG. 19, “1910”). Further, the method includes determining a recommended beauty product based at least in part on the at least one selected product (page 30, paragraph [0101]; FIG. 18, “1840”; FIG. 19, “RECOMMENDED PRODUCT A”). The method also includes simulating the at least one recommended beauty product on the facial image (page 31, paragraph [0102]; FIG. 18, “1850”; FIG. 19, “1920”).

Independent claim 22 recites a method for simulating beauty product application. The method includes displaying for a user a facial image on a display (page 29, paragraph [098]; FIG. 19, “1730”). The method also includes receiving from the user a selection of at least one beauty product (page 29, paragraph [099]; FIG. 18, “1820”). The method also includes identifying a recommended beauty product complementary to the at least one selected product (page 30, paragraph [0101]; FIG. 18, “1840”; FIG. 19, “RECOMMENDED PRODUCT A”). Further, the method includes notifying the user of the complementary beauty product (page 23, paragraph [079]; FIG. 1B, “160”). The

¹ In referring to the specification and drawings, Appellants do not intend to limit the scope of the claims to the exemplary embodiments described in the specification and shown in the drawings. Rather, Appellants expressly affirm their entitlement to have the claims interpreted broadly, to the maximum extent permitted by statute, regulation, and applicable case law. Moreover, the references to the specification and drawings are exemplary and non-exhaustive.

method also includes providing the user with an option to trigger a simulation of a beauty product application of at least one of the selected beauty product and the complementary beauty product (page 32, paragraph [0104]; FIG. 17, "APPLY MAKE-UP NOW"). The method also includes simulating the beauty product application on the facial image in response to the user's trigger (page 31, paragraph [0102], page 32, paragraph [0104]; FIG. 18, "1850"; FIG. 19, "1920").

Independent claim 36 recites a beauty product selection system (400). The system includes a display (FIG. 5, "532") for displaying a facial image (FIG. 19, "1730") (page 29, paragraph [098]). The system also includes means for receiving a selection by a user of at least one beauty product for simulated application to the facial image. This is a means-plus-function recitation and the corresponding structure, material, or acts is/are disclosed at FIG. 5, "520," and/or any of "522," "524," and "526"; page 29, paragraph [099]; FIG. 18, "1820". Further, the system includes an identifier (FIG. 5, "540") that recommends a beauty product based on the at least one selected product (page 30, paragraph [0101]; FIG. 18, "1840"; FIG. 19, "RECOMMENDED PRODUCT A"). The system also includes a simulator (FIG. 4, "450") that causes on the facial image a visual simulation of the at least one selected beauty product and the at least one recommended beauty product (page 31, paragraph [0102], page 32, paragraph [0105]; FIG. 18, "1850"; FIG. 19, "1920").

Independent claim 55 recites a system (400) for simulating beauty product application. The system includes an image generator (FIG. 4, "450"; FIG. 5, "532") for causing display of a facial image (page 29, paragraph [098]; FIG. 19, "1730"). The system also includes means for receiving from a user a selection of at least one beauty

product. This is a means-plus-function recitation and the corresponding structure, material, or acts is/are disclosed at FIG. 5, “520,” and/or any of “522,” “524,” and “526”; page 29, paragraph [099]; FIG. 18, “1820”. The system also includes an identifier (FIG. 5, “540”) for identifying a recommended beauty product complementary to the at least one selected product (page 30, paragraph [0101]; FIG. 18, “1840”; FIG. 19, “RECOMMENDED PRODUCT A”). The system also includes a notifier (FIG. 5, “530”, “532”; FIG. 4, “450”) for notifying the user of the complementary beauty product (page 23, paragraph [079]; FIG. 1B, “160”). Further, the system includes an interface (FIG. 5, “530”, “532”) providing the user with the option to trigger a simulated application on the facial image of at least one of the selected beauty product and the complementary beauty product (page 32, paragraph [0104]; FIG. 17, “APPLY MAKE-UP NOW”). The system also includes a simulator (FIG. 5, “540”) for causing beauty product application to be simulated on the facial image in response to the user's trigger (page 31, paragraph [0102], page 32, paragraph [0104]; FIG. 18, “1850”; FIG. 19, “1920”).

Independent claim 68 recites a beauty product selection method. The method includes receiving personal information from a user (page 36, paragraphs [0117]-[0118]; FIG. 22, “U.160”). The method also includes receiving from a user a selection of at least one beauty product (page 29, paragraph [099]; FIG. 18, “1820”). The method also includes simulating the at least one selected beauty product on a facial image (page 30, paragraph [0100]; FIG. 18, “1830”; FIG. 19, “1910”). Further, the method also includes determining a recommended beauty product based on the at least one selected product and the personal information (page 30, paragraph [0101]; FIG. 18, “1840”; FIG. 19, “RECOMMENDED PRODUCT A”). The method also includes simulating the at least

one recommended beauty product on the facial image (page 31, paragraph [0102]; FIG. 18, "1850"; FIG. 19, "1920").

Independent claim 72 recites a beauty product selection method. The method includes accessing a facial image (page 28, paragraph [097]; FIG. 18, "1810"; FIG. 19, "1730"). The method also includes receiving subject-specific information (page 35, paragraph [0115]; FIG. 21A, "S.120"). The method also includes using the subject-specific information to identify at least one beauty product for simulated application to the facial image (page 35, paragraph [0115]; FIG. 21A, "S.130"). The method also includes simulating the at least one identified beauty product on the facial image (page 30, paragraph [0100]; FIG. 18, "1830"; FIG. 19, "1910"). Further, the method also includes determining a recommended beauty product based at least in part on the at least one identified product (page 30, paragraph [0101]; FIG. 18, "1840"; FIG. 19, "RECOMMENDED PRODUCT A"). The method also includes simulating the at least one recommended beauty product on the facial image (page 31, paragraph [0102]; FIG. 18, "1850"; FIG. 19, "1920").

VI. Grounds of Rejection

A. Claims 1-10, 13-17, 21, 22, 25, 27-44, 47-55, 58, and 60-72 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,801,216 to Voticky et al. ("Voticky").

B. Claims 11, 12, 18-20, 26, 45, 46, and 59 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Voticky in view of U.S. Patent No. 6,937,755 to Orpaz et al. ("Orpaz").

C. Claims 23, 24, 56, and 57 under 35 U.S.C. § 103(a) stand rejected as being unpatentable over Voticky, Orpaz, and allegedly-admitted prior art ("AAPA").

VII. Argument

REJECTION UNDER 35 U.S.C. § 102(e) BASED ON VOTICKY

A. The rejection of claim 1 under 35 U.S.C. § 102(e) over Voticky is improper

At page 3 of the Office Action, independent claim 1 was rejected under 35 U.S.C. § 102(e) as being anticipated by Voticky. Appellants respectfully traverse this rejection because Voticky fails to disclose each and every element of claim 1.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” See M.P.E.P. § 2131, quoting Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Further, “[t]he identical invention must be shown in as complete detail as is contained in the . . . claim.” See M.P.E.P. § 2131, quoting Richardson v. Suzuki Motor Co., 868 F.2d 1126, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989).

Independent claim 1 recites a combination including, for example, “determining a recommended beauty product based at least in part on [at least one product selected by a user]; and simulating the at least one recommended beauty product on [a] facial image.” Voticky fails to disclose at least “simulating the at least one recommended beauty product on the facial image,” as recited in claim 1.

The Examiner alleges that “Voticky discloses selecting beauty products, including . . . simulating the at least one recommended beauty product on the facial image. See, for example, at least Fig. 9 and references to overlays, as in an ‘After picture.’” (Office Action at 3.) Appellants respectfully disagree.

In the portions cited by the Examiner, Voticky merely discloses a client card display screen showing a “before picture” and an “after picture” for applying a makeover

item. See Voticky at Fig. 9. Further, Voticky requires the makeover item to be selected by the user rather than being “determin[ed] . . . based at least in part on [at least one product selected by a user],” as recited in claim 12. “The user . . . selects a category option from the list of category option icons 216.” Voticky, col. 8, lines 40-41. “The user can select a makeover item from the group of items displayed on the page 200.” Voticky, col. 8, lines 48-50. “The user selects an item to place the selected item over the before picture shown in the working area 210 . . . [and] the makeover system displays the selected item in the work area as a new graphic layer.” Voticky, col. 8, lines 51-54, emphasis added.

That is, in Voticky, the user manually selects a makeover item as a graphic layer, and the graphic layer of the selected item becomes overlayed on the “before picture.” Voticky’s teaching of a user-selected makeover graphic layer being overlayed on a “before picture” does not constitute “simulating . . . at least one recommended beauty product on [a] facial image,” as recited in claim 1 (emphasis added). Indeed, the selected item and its graphic layer do not correspond to a recommended beauty product that is “determin[ed] . . . based at least in part on [at least one product selected by a user], as recited in claim 1.

Voticky distinguishes the user-selected makeover item from any product recommendation. “In addition to the displayed after picture, the finished makeover screen 230 preferably includes suggestions (e.g., product recommendations).” Voticky, column 11, lines 32-34, emphasis added. In fact, Voticky requires the product recommendations to be listed separately from the finished “after picture.” See Voticky at Fig. 12 (PRODUCT RECOMMENDATION). Such a listing does not include, e.g., the

“PRODUCT RECOMMENDATION” being simulated “on a facial image,” as recited in claim 1. Id. Further, the “PRODUCT RECOMMENDATION” appears to be merely a textual listing (see the three broken lines under “PRODUCT RECOMMENDATION” in Fig. 12) rather than providing any “simulating,” as recited in claim 1. Thus, the teachings of Voticky are contrary to “simulating the at least one recommended beauty product on the facial image,” as recited in claim 1 (emphases added).

Therefore, Voticky fails to disclose each and every element of claim 1. Claim 1 is thus patentable over Voticky. Accordingly, the Section 102(e) rejection of claim 1 is improper and should be reversed.

B. The rejection of claims 22 and 55 under 35 U.S.C. § 102(e) over Voticky is improper

At pages 6 and 8 of the Office Action, independent claims 22 and 55 were respectively rejected on the same ground as claim 1, i.e., under 35 U.S.C. § 102(e) as being anticipated by Voticky. Appellants respectfully traverse this rejection because Voticky fails to disclose each and every element of claims 22 and 55.

Appellants respectfully submit that Voticky fails to disclose at least “providing [a] user with an option to trigger a simulation of a beauty product application of at least one of [a] selected beauty product and [a] complementary beauty product,” as recited in claim 22, and “an interface providing [a] user with the option to trigger a simulated application on [a] facial image of at least one of [a] selected beauty product and [a] complementary beauty product,” as recited in claim 55 (emphases added). In fact, Voticky merely discloses that the user selects the makeover item to be displayed as a graphic layer. See Voticky, col. 8, lines 51-54.

Therefore, Voticky fails to disclose each and every element of claims 22 and 55. Claims 22 and 55 are thus patentable over Voticky. Accordingly, the Section 102(e) rejection of claims 22 and 55 is improper and should be reversed.

C. The rejection of claim 36 under 35 U.S.C. § 102(e) over Voticky is improper

At page 7 of the Office Action, independent claim 36 was rejected under 35 U.S.C. § 102(e) as being anticipated by Voticky. Appellants respectfully traverse this rejection because Voticky fails to disclose each and every element of claim 36.

Appellants respectfully submit that Voticky fails to disclose at least “a simulator that causes on the facial image a visual simulation of the at least one selected beauty product and the at least one recommended beauty product,” as recited in claim 36 (emphases added).

Therefore, Voticky fails to disclose each and every element of claim 36. Claim 36 is thus patentable over Voticky. Accordingly, the Section 102(e) rejection of claim 36 is improper and should be reversed.

D. The rejection of claim 68 under 35 U.S.C. § 102(e) over Voticky is improper

At page 9 of the Office Action, independent claim 68 was rejected under 35 U.S.C. § 102(e) as being anticipated by Voticky. Appellants respectfully traverse this rejection because Voticky fails to disclose each and every element of claim 68.

Appellants respectfully submit that Voticky fails to disclose at least “determining a recommended beauty product based on the at least one selected product and the personal information [received from a user]; and simulating the at least one recommended beauty product on [a] facial image,” as recited in claim 68 (emphases added).

In fact, Voticky merely discloses that the user selects the makeover item, which does not correspond with receiving “personal information” from a user as recited in claim 68. See Voticky, col. 8, lines 51-54.

Further, Voticky’s teaching of a user-selected makeover graphic layer being overlayed on a “before picture” does not constitute “simulating the at least one recommended beauty product on [a] facial image,” as recited in claim 68 (emphasis added). Indeed, the selected item and its graphic layer do not correspond to a recommended beauty product that is “determin[ed] . . . based on the at least one selected product and the personal information [received from a user],” as recited in claim 68.

Voticky distinguishes the user-selected makeover item from any product recommendation. “In addition to the displayed after picture, the finished makeover screen 230 preferably includes suggestions (e.g., product recommendations).” Voticky, column 11, lines 32-34, emphasis added. In fact, Voticky requires the product recommendations to be listed separately from the finished “after picture.” See Voticky at Fig. 12 (PRODUCT RECOMMENDATION). Such a listing does not include, e.g., the “PRODUCT RECOMMENDATION” being simulated “on a facial image,” as recited in claim 68. Id. Further, the “PRODUCT RECOMMENDATION” appears to be merely a textual listing (see the three broken lines under “PRODUCT RECOMMENDATION” in Fig. 12) rather than providing any “simulating,” as recited in claim 68. Thus, the teachings of Voticky are contrary to “simulating the at least one recommended beauty product on [a] facial image,” as recited in claim 68 (emphases added).

Therefore, Voticky fails to disclose each and every element of claim 68. Claim 68 is thus patentable over Voticky. Accordingly, the Section 102(e) rejection of claim 68 is improper and should be reversed.

E. The rejection of claim 72 under 35 U.S.C. § 102(e) over Voticky is improper

At page 9 of the Office Action, independent claim 72 was rejected under 35 U.S.C. § 102(e) as being anticipated by Voticky. Appellants respectfully traverse this rejection because Voticky fails to disclose each and every element of claim 72.

Appellants respectfully submit that Voticky fails to disclose at least “using the subject-specific information to identify at least one beauty product for simulated application to [a] facial image; . . . determining a recommended beauty product based at least in part on . . . at least one identified product; and simulating the at least one recommended beauty product on the facial image,” as recited in claim 72 (emphases added).

In fact, Voticky merely discloses that the user selects the makeover item, which does not correspond to using “subject-specific information” to identify at least one beauty product for simulated application, as recited in claim 72. See Voticky, col. 8, lines 51-54.

Further, Voticky’s teaching of a user-selected makeover graphic layer being overlayed on a “before picture” does not constitute “simulating . . . at least one recommended beauty product on [a] facial image,” as recited in claim 72 (emphasis added). Indeed, the selected item and its graphic layer do not correspond to a recommended beauty product that is “determin[ed] . . . based at least in part on . . . at

least one identified product [that is identified using subject-specific information],” as recited in claim 72.

Voticky distinguishes the user-selected makeover item from any product recommendation. “In addition to the displayed after picture, the finished makeover screen 230 preferably includes suggestions (e.g., product recommendations).” Voticky, column 11, lines 32-34, emphasis added. In fact, Voticky requires the product recommendations to be listed separately from the finished “after picture.” See Voticky at Fig. 12 (PRODUCT RECOMMENDATION). Such a listing does not include, e.g., the “PRODUCT RECOMMENDATION” being simulated “on [a] facial image,” as recited in claim 72. Id. Further, the “PRODUCT RECOMMENDATION” appears to be merely a textual listing (see the three broken lines under “PRODUCT RECOMMENDATION” in Fig. 12) rather than providing any “simulating” of at least one recommended product, as recited in claim 72. Thus, the teachings of Voticky are contrary to “simulating . . . at least one recommended beauty product on [a] facial image,” as recited in claim 72 (emphases added).

Therefore, Voticky fails to disclose each and every element of claim 72. Claim 72 is thus patentable over Voticky. Accordingly, the Section 102(e) rejection of claim 72 is improper and should be reversed.

F. The rejection of claim 3 under 35 U.S.C. § 102(e) over Voticky is improper

At page 4 of the Office Action, dependent claim 3 was rejected under 35 U.S.C. § 102(e) as being anticipated by Voticky. Appellants respectfully traverse this rejection because Voticky fails to disclose each and every element of claim 3.

Claim 3 depends from independent claim 1 and therefore is allowable over Voticky for at least the same reasons as claim 1. In addition, Voticky fails to disclose at least “[a] recommended beauty product [being] simulated on [a] facial image while the simulation of the at least one selected product appears on the facial image,” as recited in claim 3.

Voticky distinguishes the user-selected makeover item from any product recommendation. Voticky requires that, “[i]n addition to the displayed after picture, the finished makeover screen 230 preferably includes suggestions (e.g., product recommendations).” Voticky, column 11, lines 32-34, emphasis added. In fact, Voticky requires the product recommendations to be listed separately from the finished “after picture.” See Voticky at Fig. 12 (PRODUCT RECOMMENDATION). Such a listing does not include, e.g., the “PRODUCT RECOMMENDATION” being “simulated on [a] facial image while the simulation of . . . at least one selected product appears on the facial image,” as recited in claim 3. Id. Further, the “PRODUCT RECOMMENDATION” appears to be merely a textual listing (see the three broken lines under “PRODUCT RECOMMENDATION” in Fig. 12) rather than being “simulated on [a] facial image,” as recited in claim 3. Thus, the teachings of Voticky are contrary to “[a] recommended beauty product [being] simulated on [a] facial image while the simulation of the at least one selected product appears on the facial image,” as recited in claim 3 (emphasis added).

Therefore, Voticky fails to disclose each and every element of claim 3. Claim 3 is thus allowable over Voticky. Accordingly, the Section 102(e) rejection of claim 3 is improper and should be reversed.

G. The rejection of claim 25 under 35 U.S.C. § 102(e) over Voticky is improper

At page 6 of the Office Action, dependent claim 25 was rejected under 35 U.S.C. § 102(e) as being anticipated by Voticky. Appellants respectfully traverse this rejection because Voticky fails to disclose each and every element of claim 25.

Claim 25 depends from independent claim 22 and therefore is allowable over Voticky for at least the same reasons as claim 22. In addition, Voticky fails to disclose at least “providing the user with an option to trigger a simulation of both the selected beauty product and the complementary beauty product [on a facial image],” as recited in claim 25.

Voticky requires product recommendations to be listed separately from the finished “after picture.” See Voticky at Fig. 12 (PRODUCT RECOMMENDATION). Such a listing does not provide any option to trigger a simulation of both a selected beauty product and a complementary beauty product, as recited in claim 25. Further, the “PRODUCT RECOMMENDATION” appears to be merely a textual listing (see the three broken lines under “PRODUCT RECOMMENDATION” in Fig. 12) rather than providing any “simulation,” as recited in claim 25. Thus, the teachings of Voticky are contrary to “providing the user with an option to trigger a simulation of both the selected beauty product and the complementary beauty product [on a facial image],” as recited in claim 25 (emphasis added).

Therefore, Voticky fails to disclose each and every element of claim 25. Claim 25 is thus allowable over Voticky. Accordingly, the Section 102(e) rejection of claim 25 is improper and should be reversed.

H. The rejection of claim 27 under 35 U.S.C. § 102(e) over Voticky is improper

At page 6 of the Office Action, dependent claim 27 was rejected under 35 U.S.C. § 102(e) as being anticipated by Voticky. Appellants respectfully traverse this rejection because Voticky fails to disclose each and every element of claim 27.

Claim 27 depends from independent claim 22 and therefore is allowable over Voticky for at least the same reasons as claim 22. In addition, Voticky fails to disclose at least a “simulation of the selected beauty product and the complementary beauty product occur[ing] sequentially [on a facial image],” as recited in claim 27.

As explained above, the “PRODUCT RECOMMENDATION” of Voticky appears to be merely a textual listing (see the three broken lines under “PRODUCT RECOMMENDATION” in Fig. 12). Accordingly, this does not constitute “simulation . . . [that] occurs sequentially [on a facial image],” as recited in claim 27. Thus, the teachings of Voticky are contrary to a “simulation of the selected beauty product and the complementary beauty product occur[ing] sequentially [on a facial image],” as recited in claim 27 (emphasis added).

Therefore, Voticky fails to disclose each and every element of claim 27. Claim 27 is thus allowable over Voticky. Accordingly, the Section 102(e) rejection of claim 27 is improper and should be reversed.

I. The rejection of claim 37 under 35 U.S.C. § 102(e) over Voticky is improper

At page 7 of the Office Action, dependent claim 37 was rejected under 35 U.S.C. § 102(e) as being anticipated by Voticky. Appellants respectfully traverse this rejection because Voticky fails to disclose each and every element of claim 37.

Claim 37 depends from independent claim 36 and therefore is allowable over Voticky for at least the same reasons as claim 36. In addition, Voticky fails to disclose at least a simulator that causes “[a] visual simulation of [a] recommended beauty product on [a] facial image while the simulation of the at least one selected product appears on the facial image,” as recited in claim 37.

Voticky distinguishes the user-selected makeover item from any product recommendation. Voticky requires that, “[i]n addition to the displayed after picture, the finished makeover screen 230 preferably includes suggestions (e.g., product recommendations).” Voticky, column 11, lines 32-34, emphasis added. In fact, Voticky requires the product recommendations to be listed separately from the finished “after picture.” See Voticky at Fig. 12 (PRODUCT RECOMMENDATION). Such a listing does not include, e.g., a “visual simulation” of the “PRODUCT RECOMMENDATION” “on a facial image while the simulation of the at least one selected product appears on the facial image,” as recited in claim 37. Id. Further, the “PRODUCT RECOMMENDATION” appears to be merely a textual listing (see the three broken lines under “PRODUCT RECOMMENDATION” in Fig. 12) rather than providing any “visual simulation,” as recited in claim 37. Thus, the teachings of Voticky are contrary to “[a] visual simulation of the recommended beauty product on [a] facial image while the simulation of the at least one selected product appears on the facial image,” as recited in claim 37 (emphasis added).

Therefore, Voticky fails to disclose each and every element of claim 37. Claim 37 is thus allowable over Voticky. Accordingly, the Section 102(e) rejection of claim 37 is improper and should be reversed.

J. The rejection of claim 58 under 35 U.S.C. § 102(e) over Voticky is improper

At page 8 of the Office Action, dependent claim 58 was rejected under 35 U.S.C. § 102(e) as being anticipated by Voticky. Appellants respectfully traverse this rejection because Voticky fails to disclose each and every element of claim 58.

Claim 58 depends from independent claim 55 and therefore is allowable over Voticky for at least the same reasons as claim 55. In addition, Voticky fails to disclose at least an “interface [that] provides the user with an option to trigger a simulation of both the selected beauty product and the complementary beauty product [on a facial image],” as recited in claim 58.

As explained above, the “PRODUCT RECOMMENDATION” of Voticky appears to be merely a textual listing (see the three broken lines under “PRODUCT RECOMMENDATION” in Fig. 12). Nothing corresponds to “simulation” of both a selected beauty product and a complementary beauty product, as recited in claim 58. Thus, the teachings of Voticky are contrary to an “interface [that] provides the user with an option to trigger a simulation of both the selected beauty product and the complementary beauty product [on a facial image],” as recited in claim 58 (emphasis added).

Therefore, Voticky fails to disclose each and every element of claim 58. Claim 58 is thus allowable over Voticky. Accordingly, the Section 102(e) rejection of claim 58 is improper and should be reversed.

K. The rejection of claim 60 under 35 U.S.C. § 102(e) over Voticky is improper

At page 8 of the Office Action, dependent claim 60 was rejected under 35 U.S.C. § 102(e) as being anticipated by Voticky. Appellants respectfully traverse this rejection because Voticky fails to disclose each and every element of claim 60.

Claim 60 depends from claim 58, which further depends from independent claim 55, and therefore is allowable over Voticky for at least the same reasons as claims 55 and 58. In addition, Voticky fails to disclose at least a “simulator [that] performs at least one of simulating the selected beauty product and the complementary beauty product on differing facial images and sequentially simulating the selected beauty product and the complementary beauty product,” as recited in claim 60.

Voticky does not disclose a simulator that provides simulating a selected beauty product and a complementary beauty product on differing facial images, and/or sequentially simulating such products, as recited in claim 60. As explained above, Voticky requires product recommendations to be listed separately from the finished “after picture.” See Voticky at Fig. 12 (PRODUCT RECOMMENDATION). Thus, the teachings of Voticky are contrary to a “simulator [that] performs at least one of simulating the selected beauty product and the complementary beauty product on differing facial images and sequentially simulating the selected beauty product and the complementary beauty product,” as recited in claim 60 (emphasis added).

Therefore, Voticky fails to disclose each and every element of claim 60. Claim 60 is thus allowable over Voticky. Accordingly, the Section 102(e) rejection of claim 60 is improper and should be reversed.

L. The rejection of claims 2, 4-10, 13-17, 21, 28-35, 38-44, 47-54, 61-67, and 69-71 under 35 U.S.C. § 102(e) over Voticky is improper

Appellants respectfully traverse the rejection of claims 2, 4-10, 13-17, 21, 28-35, 38-44, 47-54, 61-67, and 69-71 under 35 U.S.C. § 102(e) over Voticky, because Voticky fails to disclose each and every element of these claims.

Appellants note that claims 2, 4-10, 13-17, 21 depend from independent claim 1, claims 28-35 depend from independent claim 22, claims 38-44 and 47-54 depend from independent claim 36, claims 61-67 depend from independent claim 55, and claims 69-71 depend from independent claim 68. As explained above, independent claims 1, 22, 36, 55, and 68 are allowable over Voticky. Thus, claims 2, 4-10, 13-17, 21, 28-35, 38-44, 47-54, 61-67, and 69-71 are allowable for at least the same reasons as the respective claim from which they depend. Reversal of the Section 102(e) rejection of claims 2, 4-10, 13-17, 21, 28-35, 38-44, 47-54, 61-67, and 69-71 is respectfully requested.

REJECTION UNDER 35 U.S.C. § 103(a) BASED ON VOTICKY IN VIEW OF ORPAZ

M. The rejection of claims 11, 12, 18-20, 26, 45, 46, and 59 under 35 U.S.C. § 103(a) over Voticky in view of Orpaz is improper

Appellants respectfully traverse the rejection of claims 11, 12, 18-20, 26, 45, 46, and 59 under 35 U.S.C. § 103(a) over Voticky in view of Orpaz, because Voticky and Orpaz fail to teach or suggest all of the elements of claims 11, 12, 18-20, 26, 45, 46, and 59.

Claims 11, 12, and 18-20 depend from independent claim 1, claim 26 depends from independent claim 22, claims 45 and 46 depend from independent claim 36, and claim 59 depends from independent claim 55. As explained previously, Voticky fails to teach or suggest all of the above-recited features of claims 1, 22, 36, and 55. Orpaz fails to cure the deficiencies of Voticky.

Orpaz teaches:

... the system 10 includes a retrieval interface 72 for retrieving saved "looks." ... Also, upon initial selection or highlighting of a saved look (e.g., by clicking once upon the associated thumbnail image), the retrieval interface 72 preferably displays written details regarding the products included in the look in a product detail portion 70. When a look is chosen from the retrieval interface 72, the system changes to the image simulation interface 33 and displays the chosen look, whereby the user can manipulate the look as previously described.

Orpaz, column 4, lines 37-50, emphasis added. However, Orpaz's teaching of retrieval of a stored look and written details of products included in the look does not constitute the above-recited features of claims 1, 22, 36, and 55, as required by the corresponding dependent claims. Therefore, the Section 103(a) rejection of claims 11, 12, 18-20, 26, 45, 46, and 59 is improper and should be reversed.

**REJECTION UNDER 35 U.S.C. § 103(a) BASED VOTICKY
IN VIEW OF ORPAZ AND AAPA**

N. The rejection of claims 23, 24, 56, and 57 under 35 U.S.C. § 103(a) as being unpatentable over Voticky, Orpaz, and AAPA is improper

Appellants respectfully traverse the rejection of claims 23, 24, 56, and 57 under 35 U.S.C. § 103(a) as being unpatentable over Voticky, Orpaz, and AAPA, because Voticky, Orpaz, and AAPA fail to teach or suggest all of the elements of claims 23, 24, 56, and 57.

Claims 23 and 24 depend from independent claim 22, and claims 56 and 57 depend from independent claim 55. As explained previously, Voticky and Orpaz fail to teach or suggest at least “providing the user with an option to trigger a simulation of a beauty product application of at least one of the selected beauty product and the complementary beauty product,” as recited in claim 22, and “an interface providing the user with the option to trigger a simulated application on the facial image of at least one of the selected beauty product and the complementary beauty product,” as recited in claim 55. AAPA fails to cure the deficiencies of Voticky and Orpaz.

The Examiner alleges that “[a]s admitted prior art, it was old and well known . . . to analyze historical data to provide guidance concerning consumer preferences.” Office Action at 11. Appellants respectfully disagree with the Examiner’s allegation. The Examiner fails to provide any explanation of why he deems such subject matter to be “admitted prior art.” For example, the Examiner fails to cite any portion of the specification such as the “Description of Related Art” section of the specification. Furthermore, even if there were to be such “admitted prior art,” which there is not, nothing provides any teaching of artificial intelligence. Indeed, the Examiner even admits that Voticky and Orpaz do not disclose the use of artificial intelligence. Id.

Moreover, AAPA fails to teach or suggest the above recited features of claims 22 and 55, as required by claims 23-24 and 56-57, respectively. Therefore, the Section 103(a) rejection of claims 23, 24, 56, and 57 is improper and should be reversed.

O. Conclusion

For the reasons given above, all of the rejections applied to pending claims 1-61 should be reversed.


To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this Appeal Brief, such extension is hereby respectfully requested.

If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to Deposit Account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
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Dated: October 5, 2009

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Claims Appendix to Appeal Brief Under Rule 41.37(c)(1)(viii)

1. A beauty product selection method, comprising:
accessing a facial image;
receiving from the user a selection of at least one beauty product for simulated application to the facial image;
simulating the at least one selected beauty product on the facial image;
determining a recommended beauty product based at least in part on the at least one selected product; and
simulating the at least one recommended beauty product on the facial image.
2. The method of claim 1, further including causing the facial image to be displayed to the user.
3. The method of claim 1, wherein the recommended beauty product is simulated on the facial image while the simulation of the at least one selected product appears on the facial image.
4. The method of claim 2, wherein causing the facial image to be displayed includes providing software that facilitates display of the facial image.

5. The method of claim 1, wherein the facial image is an image of the user's face.
6. The method of claim 2, wherein causing the facial image to be displayed includes processing an initial facial image in a manner to thereafter permit simulated application of a beauty product to a selected portion of the facial image.
7. The method of claim 1, further comprising receiving from the user an affirmative request seeking a recommendation, and wherein the simulation of the recommended product appears on the facial image after the user affirmatively seeks a recommendation.
8. The method of claim 7, wherein the request identifies at least one of a brand, price, store, and product characteristic.
9. The method of claim 7, further comprising displaying a button activatable to cause a recommendation to be displayed.
10. The method of claim 1, wherein simulating a recommended beauty product includes sequentially simulating alternative recommendations.
11. The method of claim 10, further comprising causing the facial image to be displayed to the user, wherein a first alternative simulated recommendation is displayed simultaneously on the facial image with a display of the at least one selected product,

and wherein thereafter a second alternative simulated recommendation is displayed simultaneously on the facial image with a display of the at least one selected product.

12. The method of claim 10, further comprising providing the user with a toggle switch to toggle between displays of the first and second simulated recommendations.

13. The method of claim 1, wherein the recommended product is complementary to the selected product, wherein the method further comprises maintaining a data structure identifying products, and wherein determining a recommended beauty product is accomplished by accessing the data structure.

14. The method of claim 13, wherein the data structure is populated with information derived from at least one of advice of beauty experts, user preference data, user purchase history, and survey data.

15. The method of claim 1, further comprising eliciting personal information from the user, wherein the recommendation is a function of both the at least one selected product and the personal information.

16. The method of claim 15, wherein the personal information includes at least one of age, skin type, skin texture, skin tone, wrinkles, hair color, hair style, hair condition, eye color, allergies, facial features, demographics, user preferences, and purchase history.

17. The method of claim 1, further comprising providing the user with an ability to select a basis for a recommendation, the basis being at least one of consumer survey data, consumer buying preferences, and expert advice.

18. The method of claim 2, further comprising: causing an additional facial image to be displayed to the user; and causing a second recommended product to appear on the additional facial image.

19. The method of claim 18, wherein multiple facial images are displayed simultaneously.

20. The method of claim 19, wherein each facial image has a differing combination of beauty products simulated thereon.

21. The method of claim 1, wherein the method is conducted, at least in part, in a network environment, wherein accessing the facial image and receiving the user selection occur via a network and in at least one location remote from a location of the user.

22. A method of simulating beauty product application, the method comprising:
displaying for a user a facial image on a display;
receiving from the user a selection of at least one beauty product;

identifying a recommended beauty product complementary to the at least one selected product;

notifying the user of the complementary beauty product;

providing the user with an option to trigger a simulation of a beauty product application of at least one of the selected beauty product and the complementary beauty product; and

simulating the beauty product application on the facial image in response to the user's trigger.

23. The method of claim 22, wherein identifying a complementary product is performed using an artificial intelligence engine.

24. The method of claim 23, wherein the artificial intelligence engine is based on at least one of a neural network, constraint program, fuzzy logic, classification, conventional artificial intelligence, symbolic manipulation, fuzzy set theory, evolutionary computation, cybernetics, data mining, approximate reasoning, derivative-free optimization, and soft computing.

25. The method of claim 22, wherein providing the user with an option to trigger a simulation includes providing the user with an option to trigger a simulation of both the selected beauty product and the complementary beauty product.

26. The method of claim 25, wherein the simulation of the selected beauty product and the complementary beauty product occurs simultaneously on the facial image.

27. The method of claim 25, wherein the simulation of the selected beauty product and the complementary beauty product occurs sequentially.

28. The method of claim 22, further comprising providing the user with an option to change a color of the selected beauty product.

29. The method of claim 22, further comprising providing the user with an option to change a color of the complementary beauty product.

30. The method of claim 29, wherein the option to change the color is based on at least one of a color bar, color palette, progressive color adjuster, and textual entry.

31. The method of claim 22, wherein the facial image includes at least one of a photograph, simulation, and graphical representation.

32. The method of claim 22, wherein the method is conducted, at least in part, in a network environment, wherein receiving the user selection occurs via a network and in at least one location remote from a location of the user, and wherein notifying the user occurs via the network.

33. The method of claim 22, further comprising receiving a request from the user for an alternative complementary product recommendation.

34. The method of claim 33, further comprising providing the user with an option to trigger a simulation of the alternative complementary product.

35. The method of claim 33, further comprising providing the user with an option to change a color of at least one of the selected beauty product, the recommended complementary beauty product, and the alternative complementary product.

36. A beauty product selection system, comprising:
a display for displaying a facial image;
means for receiving a selection by a user of at least one beauty product for simulated application to the facial image;
an identifier that recommends a beauty product based on the at least one selected product; and
a simulator that causes on the facial image a visual simulation of the at least one selected beauty product and the at least one recommended beauty product.

37. The system of claim 36, wherein the simulator causes the visual simulation of the recommended beauty product on the facial image while the simulation of the at least one selected product appears on the facial image.

38. The system claim 36, wherein the display includes software that facilitates the display of the facial image.

39. The system of claim 36, wherein the facial image is an image of the user's face.

40. The system of claim 36, further including a processor for causing an initial facial image of the user to be processed in a manner to thereafter permit simulated application of a beauty product on a selected portion of the facial image.

41. The system of claim 36, further including an interface providing the user with an option to affirmatively seek a recommendation, and wherein the simulation of the recommended product appears on the facial image after the user affirmatively seeks the recommendation.

42. The system of claim 41, wherein the interface provides the user with an option to specify at least one of brand, price, store, and product characteristic.

43. The system of claim 41, wherein the interface further includes a button activatable to cause a recommendation to be displayed.

44. The system of claim 36, wherein the simulator causes alternative simulated recommendations to sequentially appear on the facial image.

45. The system of claim 44, wherein the simulator causes a first alternative simulated recommendation to be displayed simultaneously on the facial image with a display of the at least one selected product, and wherein thereafter the simulator causes a second alternative simulated recommendation is displayed simultaneously on the facial image with a display of the at least one selected product.

46. The system of claim 44, wherein the simulator further includes a toggle that alternates between displays of the first and second simulated recommendations.

47. The system of claim 36, further comprising a data structure identifying complementary products and wherein the identifier is configured to access the data structure to recommend a beauty product.

48. The system of claim 47, wherein the data structure is populated with information derived from at least one of advice of beauty experts, user preference data, user purchase history, and survey data.

49. The system of claim 36, further comprising an interface for eliciting personal information from the user, and where the recommendation is a function of both the at least one selected product and the personal information.

50. The system of claim 49, wherein the personal information includes at least one of age, skin type, skin texture, skin tone, wrinkles, hair color, hair style, hair condition, eye color, allergy, facial features, demographics, user preferences, and purchase history.

51. The system of claim 36, further comprising a selector for providing the user with an ability to select a source of a recommendation, the source being at least one of consumer survey data, consumer buying preferences, and expert advice.

52. The system of claim 36, wherein the display presents two facial images, and wherein differing recommended products are displayed on each image.

53. The system of claim 52, wherein multiple facial images are simultaneously displayed.

54. The system of claim 53, wherein the simulator visually simulates a differing combination of beauty products on each facial image.

55. A system for simulating beauty product application, the system comprising:
an image generator for causing display of a facial image;
means for receiving from a user a selection of at least one beauty product;

an identifier for identifying a recommended beauty product complementary to the at least one selected product;

a notifier for notifying the user of the complementary beauty product;

an interface providing the user with the option to trigger a simulated application on the facial image of at least one of the selected beauty product and the complementary beauty product; and

a simulator for causing beauty product application to be simulated on the facial image in response to the user's trigger.

56. The system of claim 55, wherein the identifier is an artificial intelligence engine.

57. The system of claim 56, wherein the artificial intelligence engine is based on at least one of a neural network, constraint program, fuzzy logic, classification, conventional artificial intelligence, symbolic manipulation, fuzzy set theory, evolutionary computation, cybernetics, data mining, approximate reasoning, derivative-free optimization, and soft computing.

58. The system of claim 55, wherein the interface provides the user with an option to trigger a simulation of both the selected beauty product and the complementary beauty product.

59. The system of claim 58, wherein the simulator simulates the selected beauty product and the complementary beauty product simultaneously on the facial image.

60. The system of claim 58, wherein the simulator performs at least one of simulating the selected beauty product and the complementary beauty product on differing facial images and sequentially simulating the selected beauty product and the complementary beauty product.

61. The system of claim 55, further comprising an interface for providing the user with an option to change a color of the selected beauty product at least one of before the visual simulation and after the visual simulation.

62. The system of claim 55, further comprising an interface for providing the user with an option to change a color of the complementary beauty product.

63. The system of claim 62, wherein the interface is at least one of a color bar, color palette, progressive color adjuster, and textual processor.

64. The system of claim 55, wherein the facial image is at least one of a photograph, simulation, digital image, and graphical representation.

65. The system of claim 55, wherein the interface is further configured to provide the user with an option to request an alternative complementary product recommendation.

66. The system of claim 65, wherein the interface provides the user with an option to change at least one color of the selected beauty product, the complementary beauty product, and the alternative complementary product.

67. The system of claim 65, further comprising a storage location for storing the facial image.

68. A beauty product selection method, comprising:
receiving personal information from a user;
receiving from a user a selection of at least one beauty product;
simulating the at least one selected beauty product on a facial image;
determining a recommended beauty product based on the at least one selected product and the personal information; and
simulating the at least one recommended beauty product on the facial image.

69. The method of claim 68, wherein the personal information includes an image of the user on which the simulating occurs.

70. The method of claim 69, further comprising processing the image of the user to determine facial characteristics, and wherein determining takes into account the facial characteristics.

71. The method of claim 68, wherein the method is conducted, at least in part, in a network environment, wherein receiving the personal information, and receiving the user selection occur via a network and in at least one location remote from a location of the user.

72. A beauty product selection method, comprising:

- accessing a facial image;
- receiving subject-specific information;
- using the subject-specific information to identify at least one beauty product for simulated application to the facial image;
- simulating the at least one identified beauty product on the facial image;
- determining a recommended beauty product based at least in part on the at least one identified product; and
- simulating the at least one recommended beauty product on the facial image.

Application No. 10/024,355
Attorney Docket No. 05725.1008

Evidence Appendix to Appeal Brief Under Rule 41.37(c)(1)(ix)

None

Application No. 10/024,355
Attorney Docket No. 05725.1008

Related Proceedings Appendix to Appeal Brief Under Rule 41.37(c)(1)(x)

None